

Welcome
SVP 2 Determination of Disability



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Overview

- Benefits
- Differences
- Definitions



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Types of Benefits

- SSDI also known as Title 2 and Social Security Disability Insurance is an insurance program where the worker must contribute and purchase "quarters" to become eligible. Rules found in 20 CFR 404.
- SSI also known as Title 16 or Supplemental Security Income is a program for persons of limited means (welfare) who have never worked or have not worked long enough or recently enough to have enough quarters to qualify. Rules found in 20 CFR 416.
- DWB - Disabled Widow/widower Benefits is for surviving spouses where the primary worker would have typically been eligible for Title 2.
- Children - Generally VE's are not involved with children's SSI claims.
- Concurrent claims are an application for both SSI and SSDI.



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SSDI vs SSI

SSDI (Social Security Disability Insurance) is also known as Title II and the rules are found within 20 CFR §404. SSDI Title II is paid to people who work in "covered" employment or self-employment and who pay sufficient Social Security taxes (quarters) to become "insured" for disability benefits. There are also disability benefits that may be paid to the disabled adult children of insured workers who retire, die, or are themselves disabled, and disability benefits that may be paid to certain disabled widows and widowers of insured workers. It is an insurance plan and the worker qualifies by paying quarters into the disability insurance system. There is a 5 month waiting period before one can obtain benefits. Benefits are payable up to 12 months retroactive to the date of application for benefits.



SSDI vs SSI

SSI (Supplemental Security Income) also known as Title 16 or Title XVI and the rules are found in 20 CFR §416. SSI Title XVI provides payments to individuals who are age 65 or older, or blind, or disabled, and who have limited income and resources. SSI payments are funded from general tax revenues and not from Social Security taxes. It is a need based (the poor or those with limited financial resources) and who have not worked, have not worked enough to have enough quarters, or have not worked recently enough to qualify for SSDI. There is no waiting period but benefits cannot be paid any sooner than the month after the month of application.



Blindness

There are different rules for determining disability for individuals who are statutorily blind. They are discussed these in §§ 404.1581 through 404.1587. There are also different rules for determining disability for widows, widowers, and surviving divorced spouses for monthly benefits for months prior to January 1991. SSA discusses these rules in §§ 404.1577, 404.1578, and 404.1579.



Intro to Definition of Disability

How does Social Security define disability in SSDI and SSI (NOTE: for purposes of brevity, we will only use the §404 citations although there are virtually identical regulations in §416.)?

- 20 CFR §404.1505
 - The inability to do any SGA;
 - By reason of any medically determinable physical or mental impairment;
 - Which can be expected to result in death;
 - Or - which has lasted or can be expected to last for a continuous period of not less than 12 months.
- There are different rules for determining disability for individuals who are statutorily blind, widows, widowers, and surviving divorced spouses, children, and disabled adult children.



Definition of Disability Cont'd

- Definition of Disability
- 20 CFR 404.1505 for Title 2/SSDI and
- 20 CFR 416.905 for Title 16/SSI
- The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.



Definition of Disability Cont'd.

- To meet this definition, the individual must have a severe impairment(s) that makes them unable to do their past relevant work (see 20 CFR § 404.1560(b)) or any other substantial gainful work that exists in the national economy.
- If the severe impairment(s) does not meet or medically equal a listing, SSA will assess the residual functional capacity as provided in §§ 404.1520(e) and 404.1545. (See §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) SSA will use this residual functional capacity assessment to determine if past relevant work can be done. If it is found that past relevant work cannot be done, SSA will use the same residual functional capacity assessment and the individual's vocational factors of age, education, and work experience to determine if other work can be done. (See § 404.1520(h) for an exception to this rule.) This definition of disability will be used for those applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability before age 22 or, with respect to disability benefits payable for months after December 1990, as a widow, widower, or surviving divorced spouse.



The Sequential Evaluation Process

The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that is followed in a set order. If the claimant can be found disabled or not disabled at a step, then a determination or decision will be made and there is no need to go on to the next step. If it cannot be found that the person is disabled or not disabled at a step, they go on to the next step. The definition of disability is met by following the sequential evaluation process. 20 CFR §404.1520



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Step 1 - Are you working?

Step 1 - The individual must be unable to work on a relatively full time basis for 12 consecutive months at SGA levels.

- SGA for employees is represented by full-time (approx. 40 hrs) per week and/or income threshold (approx. \$1180 per month for non-blind and \$1970 for blind for 2018). It is different for those who are self-employed.
- If the individual is doing substantial gainful activity, they will be found to be not disabled.



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Step 2 - Do you have a Severe Impairment?

Step 2 - A Severe Impairment.

- If they are not doing SGA, their impairment must meet the 12 month duration and be an impairment or combination of impairments which "significantly limits an individual's physical or mental abilities to do basic work activities; an impairment(s) that is "not severe" must be a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities. ([SSR 85-28](#))



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Step 3 - Do you meet or equal a listed impairment?

Step 3 - The Listings:

- If an individual is not engaging in SGA, and has a severe impairment, this impairment is compared to criteria in The Listings.
- Social Security has published (and updates) a list of impairments and conditions which they consider inconsistent with a person's ability to sustain work in any capacity.
- If the person meets or equals a listing they will automatically be found disabled.



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Step 4 - What was the prior work and can it be performed?

- The VE will provide the DOT Code, DOT Title, SVP and Physical demands of prior work in the last 15 years* (ALJ determines what jobs should or should not be included).
- Based upon the hypothetical posed by the ALJ or Representative, can the individual return to this occupation?

*Unless otherwise directed by the ALJ to go back beyond 15 years.



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Same Job- Past Work

Step 4 - Burden of proof is on the claimant and/or their representative.

- Can the claimant do their past work?
 - 404.1520 (f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work.
- At this step it remains incumbent for the claimant to prove that they cannot return to their past relevant work.
- At Step 5 the burden shifts to the Administration to prove that given a specific RFC (hypotheticals posed by the ALJ and/or Representative), jobs would exist in significant numbers in either in the region where they live or in several other regions of the country. 404.1566



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Residual Functional Capacity

Before the process proceeds from step three to step four, a residual functional capacity is determined by the ALJ or the attorney/representative which is then used at both step 4 and step 5.

At steps 4 and 5 the VE is called upon for opinion.



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SSA and the DOT

Kerner v. Fleming, 283 F.2d 916, 921 (2nd Cir. 1960) The court held that a denial of disability benefits could not be sustained on the "mere theoretical ability" to engage in substantial gainful activity. Rather, held the court, where a claimant for disability benefits has presented evidence to show that he is precluded from engaging in his usual, prior, or customary occupations, there is a burden on the administrative agency to produce evidence showing what other work, if any, he can still do and what employment opportunities in such work are available to him.

<http://www.ssa.gov/history/ssalbjoper5.html>



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Grid Rules

THE MOST IMPORTANT THING TO REMEMBER IS THAT THE ALJ CANNOT RELY ON YOUR TESTIMONY IF IT IS INCONSISTENT WITH - OR CONTRADICTS SSA RULES, SO YOU MUST BE AWARE OF SOCIAL SECURITY'S VOCATIONALLY RELATED DEFINITIONS AND OF HOW THE GRID RULES WORK.



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Know the Vocational Factors Associated with ODAR and your Testimony

- Age
- Education
- Work Experience/Transferability
- Physical/exertional
- Mental/non-exertional
- Frequency



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GRID RULES – GUIDELINES ALJS USE IN MAKING DECISIONS OF DISABILITY

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled
202.02	Dododo	Skilled or semiskilled—skills not transferable	Do ;
202.03	Dododo	Skilled or semiskilled—skills transferable ¹⁾	Not disabled
202.04	Dodo	High school graduate or more—does not provide for direct entry into skilled work ²⁾	Unskilled or none	Disabled
202.05	Dodo	High school graduate or more—provides for direct entry into skilled work ²⁾do	Not disabled
202.06	Dodo	High school graduate or more—does not provide for direct entry into skilled work ²⁾	Skilled or semiskilled—skills not transferable	Disabled
202.07	Dododo	Skilled or semiskilled—skills transferable ²⁾	Not disabled

¹⁾Do or Do; is an abbreviation for "Disab."



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Step 5 - Are there any other jobs?

Step 5 - Based upon the claimant's age, education, PRW/skills, and RFC, would they be able to adjust to other work?

- If they cannot do their past relevant work because of a severe impairment(s) (or do not have any past relevant work), the vocational factors (age, education, and work experience) will be used to determine if an adjustment to other work can be made. If an adjustment can be made, the claimant will be found not disabled. If an adjustment cannot be made, they will be found disabled.



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Other Work - Based on the Hypothetical

Step 5 - Burden of proof shifts to SSA the Commissioner

- If you testify that given the hypo the claimant can do past relevant work, the judge may still go to Step 5 and ask about other work.
- The judge will use several RFC's from the record to pose hypothetical questions. It is important for them to gather as much vocational testimony as possible.
- Post hearing Interrogatories are time consuming and disliked.
- Based on the hypo, is there other work that the claimant can do?
- What are the job numbers for those jobs?



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References

- Your Age as a Vocational Factor 20 CFR 404.1563
- Your education as a vocational factor 20 CFR 404.1564 -.
- Skill Requirements 20 CFR 404.1568
- 20 CFR 404.1566
- Rules found in 20 CFR 404
- Rules found in 20 CFR 416.
- 20 CFR §404.1505
- 20 CFR §404.1520
- [SSR 85-28](#)
- *Kerner v. Flemming*, 283 F.2d 916, 921 (2nd Cir.1960)
- <http://www.ssa.gov/history/ssa/lbjoper5.html>



References cont'd

- GRIDS-SSR 82-47c
- SCO-SSR 96-9 *Capacity to do other work*
- Physical Exertional Requirement Definitions - 20 CFR 404.1567
- Non-exertional Requirement Definitions - 20 CFR 404.1569a
- SSA estimation of "unskilled" jobs
- 20 CFR Appendix 2 to Subpart P of Part 404, Medical Vocational Guidelines Sec. 200.00 (b)
- Work Experience 404.1565 - 15 Year Rule


